an action for assault and battery. *Held*, that the plaintiff may recover. *Hurst* v. *Picture Theatres, Ltd.*, 30 T. L. Rep. 98 (K. B. Div., Nov. 18, 1913).

By the purchase of his ticket the plaintiff gets no legal property right; for there is no intention to create a lease, and it does not seem that the possession is of such a nature as to create this interest. *Wood* v. *Leadbitter*, 13 M. & W. 838. *Cf. White* v. *Maynard*, 111 Mass. 250; *Hancock* v. *Austin*, 14 C. B. N. S. 634. *Contra*, *Drew* v. *Peer*, 93 Pa. 234. The ticket holder has a license to enter the theatre and remain there. But since it is not coupled with an interest, it is revocable at the will of the licensor, although consideration has been paid. *Hewlins* v. *Shippam*, 5 B. & C. 221. On revocation the licensee becomes a trespasser. *Ruggles* v. *Lesore*, 24 Pick. (Mass.) 187. But, in a jurisdiction like that of the principal case, where there is a fusion of law and equity, if the plaintiff's license gives him a right of which equity will take cognizance it would seem enough to defeat the defendant's justification for the ejectment. See SALMOND, TORTS, 3 ed., p. 247. But obviously no equitable servitude can be imposed by this contract, even though the requisite intent to create it be admitted. The contract neither imposes a restriction, nor is there any property to which the benefit of the servitude could attach. *Dana* v. *Wentworth*, 111 Mass. 291. Also specific performance of the contract, as such, would be denied under these facts, because of the substantial adequacy of legal damages and the trivial nature of the contract. *Carter* v. *Ferguson*, 58 Hun (N. Y.) 569. Since a theatre, although licensed by the state, is not a public service company, no tort liability can be based on the mere failure to perform the affirmative duty undertaken. *Purcell* v. *Daly*, 19 Abb. N. C. (N. Y.) 301. The court therefore seems to have erred in permitting recovery in tort.

TITLE, OWNERSHIP, AND POSSESSION — POSSESSION — RIGHT OF ADVERSE POSSESSION TO RECOVER DAMAGES FOR PERMANENT DEPRECIATION. — The plaintiff, in adverse possession of land, seeks to recover for permanent injuries caused by the defendants' diverting a watercourse. *Held*, that the plaintiff cannot recover. *La Salle County Carbon Coal Co.* v. *Sanitary Dist. of Chicago*, 103 N. E. 175 (Ill.).

The better view seems to be that one in adverse possession of land has title as regards all the world except the true owner. Consistently with this view, the early English statutes of limitations protected the possessor negatively, by barring the right of the true owner. See LIGHTWOOD, POSSESSION OF LAND, p. 153. Moreover, the policy of the law was to safeguard possession as such. See POLLOCK & MAITLAND, HISTORY OF THE ENGLISH LAW, Vol. II, p. 42. And this is believed to be the true basis of the theory of "tacking interests" by successive possessors. See 3 HARV. L. REV. 322. In recognition of this view, an adverse possessor is allowed to have ejectment against any one not claiming under the outstanding title. *Asher* v. *Whitlock*, L. R. 1 Q. B. 1; *contra*, *Doe d. Carter* v. *Barnard*, 13 Q. B. 945. See 20 HARV. L. REV. 563. It is also well settled that an adverse possessor may have trespass against third parties. *Reed* v. *Price*, 30 Mo. 442; *Frisbee* v. *Town of Marshall*, 122 N. C. 760, 30 S. E. 21. As between the owner and one in possession, the latter is the proper plaintiff to bring trespass. *Campbell* v. *Cushman*, 4 U. C. Q. B. 9. If the land is held adversely, the true owner cannot have trespass. *Cook* v. *Foster*, 7 Ill. 652; *Ruggles* v. *Sands*, 40 Mich. 559. But in the case of a permanent injury there is a possibility that the true owner may reëstablish his possession and sue. Consequently, to allow the adverse possessor to recover for permanent depreciation might lead to a double recovery against the trespasser. This practical difficulty could be met by requiring the damages to be paid into court, to be held for the true owner until the statutory period had run. See 20 HARV. L. REV. 563. It seems, therefore, that the adverse possessor should recover for permanent injuries. The authorities, however, support the view of the prin-

cipal case. *Anderson* v. *Thunder Bay River Boom Co.*, 57 Mich. 216, 23 N. W. 776; *Winchester* v. *City of Stevens Point*, 58 Wis. 350, 17 N. W. 3. *Contra*, *Cobb* v. *Illinois & St. L. R. & Coal Co.*, 68 Ill. 233.

UNFAIR COMPETITION — INTERFERENCE WITH MAKING OF CONTRACT — WHEN JUSTIFIED — INTERFERENCE INCIDENTAL TO GENERAL RESTRAINT OF TRADE. — A carpenter's union consistently refused to handle any lumber manufactured in an "open shop." Plaintiff, an "open shop" manufacturer, seeks to enjoin this boycott so far as it affects his product. *Held*, that no injunction will issue. *Paine Lumber Co., Ltd.*, v. *Neal*, 50 N. Y. L. J. 1497 (U. S. D. C., So. Dist. of N. Y., November, 1913).

For a discussion of some phases of the "secondary boycott," see NOTES, p. 478.

USURY — PURGING OBLIGATION OF THE TAINT OF USURY — EFFECT OF NEW CONSIDERATION. — To secure an usurious loan, the defendant placed on his land a first mortgage, which by the statute of usury was a valid lien only to the amount actually lent. In consideration of the surrender of this security and the permission to place a large first mortgage on the land, the defendant gave to the plaintiff a second mortgage which still secured a sum larger than that actually lent and executed a release of all claims for usury taken. The plaintiff sues to foreclose this second mortgage. *Held*, that he is entitled to a decree for the full amount secured, without deductions for usury. *Blohm* v. *Hannan*, 88 Atl. 622 (N. J.).

It is well settled that the taint of an originally usurious obligation affects all securities in the form of notes and mortgages into which the usurious element can be traced. *Cobe* v. *Guyer*, 237 Ill. 568, 86 N. E. 1088; *Nicrosi* v. *Walker*, 139 Ala. 369, 37 So. 97. By mutual agreement, of course, the parties may exclude all usurious items from the transaction and substitute a new security covering only the amount lawfully due . *Vermeule* v. *Vermeule*, 95 Me. 138, 49 Atl. 608; *Phillips* v. *Columbus City Building Ass'n*, 53 Ia. 719, 6 N. W. 121; *Sanford* v. *Kunz*, 9 Ida. 29, 71 Pac. 612. Such an arrangement may even validate the original securities. *Warwick* v. *Dawes*, 26 N. J. Eq. 548. *Contra*, *Miller* v. *Hull*, 4 Den. (N. Y.) 104. So long as usurious elements remain, however, the mere intervention of new obligors or obligees does not remove the taint. *Bridge* v. *Hubbard*, 15 Mass. 96; *Fitzpatrick* v. *Apperson's Executrix*, 79 Ky. 272. But a renewal of the original security given to a holder for value without notice is held to be purged of usury. *Cuthbert* v. *Haley*, 8 T. R. 390; *Kent* v. *Walton*, 7 Wend. (N. Y.) 257. The authorities also generally agree that the taint of usury will not extend to an obligation founded upon new consideration, unless the arrangement is a device to evade the statute of usury. Thus a new loan subsequent to a *bonâ fide* payment of the usurious debt will be free from usury. *Hoopes* v. *Ferguson*, 57 Ia. 39, 10 N. W. 286. *Cf. Shinkle* v. *First National Bank of Ripley*, 22 Oh. St. 516. And the usury does not affect a new security given to the usurer by one who has contracted with the debtor to pay the debt. *Scott* v. *Lewis*, 2 Conn. 132; *Cramer* v. *Lepper*, 26 Oh. St. 59. *Cf. Smith* v. *Young*, 11 Bush. (Ky.) 393. See WILLISTON'S WALD'S POLLOCK, CONTRACTS, 275. But the surrender of the usurious obligation as between the original parties could not be new consideration within this rule without practically nullifying the statute of usury. *King* v. *Perry Ins., etc. Co.*, 57 Ala. 118. In the principal case, however, the subordination of the original mortgage appears to satisfy the conception of new consideration, and the decision is undoubtedly correct.

WATERS AND WATERCOURSES — FLOOD WATERS — NON-RIPARIAN OWNER'S RIGHT TO FLOWAGE. — The defendant erected an embankment on its land and thus cut off water which, during flood times, overflowed from a watercourse